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Paper No. 19

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Director's Office  
Group 3700

*In re* Application of  
DEHMER, BERNHARD  
Application No.: 09/672,038  
Filed: September 29, 2000

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: **DECISION ON PETITION**  
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This is a decision on the petition filed November 26, 2002 to review the finality of the Office action mailed on November 12, 2002 under 37 CFR 1.181 and the restriction requirement under 37 CFR 1.144 in the same Office action. It is also noted that an amendment was filed on February 19, 2003 with a certificate of mailing of February 12, 2003.

The petition under 37 CFR 1.181 to withdraw the finality of the Office action is GRANTED.

The petition under 37 CFR 1.144 to withdraw the restriction requirement is DISMISSED as untimely.

MPEP 1208.02 states in part:

The examiner may, with approval from the supervisory patent examiner, reopen prosecution to enter a new ground of rejection after appellant's brief or reply brief has been filed. The Office action containing a new ground of rejection may be made final if the new ground of rejection was (A) necessitated by amendment, or (B) based on information presented in an information disclosure statement under 37 CFR 1.97(c) where no statement under 37 CFR 1.97(e) was filed. See MPEP § 706.07(a).

37 CFR 1.144 states:

After a final requirement for restriction, the applicant, in addition to making any reply due on the remainder of the action, may petition the Commissioner to review the requirement. Petition may be deferred until after final action on or allowance of claims to the invention elected, but must be filed not later than appeal. A petition will not be considered if reconsideration of the requirement was not requested (see § 1.181).


Art Unit: 3753

In response to petitioner's appeal brief filed on July 29, 2002, a final office action was mailed on November 12, 2002. A review of the file history indicates that the new ground of rejection in the November 12, 2002 Office action was not necessitated by amendment or based on information resented in an IDS under 17 CFR 1.97(c) where no statement under 37 CFR 1.97(e) was filed as set forth in MPEP 1208.02. Accordingly, the petition to withdraw the finality of the Office action is granted. In addition, it is noted that the Office action does not indicate that supervisory approval was given to reopen prosecution. The next Office action should indicate that such approval was received.

In regard to the petition to withdraw the restriction requirement, there has been no final requirement for restriction or reconsideration requested by the petitioner as required by 37 CFR 1.144, therefore, the petition to withdraw the restriction requirement is premature and is dismissed as untimely. The examiner is instructed to treat petitioner's arguments as a request for reconsideration.

Since petitioner has filed a response to the November 12, 2002 Office action, the finality of the Office action will be withdrawn and the response filed February 19, 2003 will be entered. The application will be forwarded to the examiner for action not inconsistent with this decision.

Any inquiry to this decision should be directed to Special Program Examiner, Linda Sholl, at 703-308-1288.

  
Richard A. Bertsch, Director  
Technology Center 3700